

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-6019**

**PETITION OF KENDALL E. JACKSON**  
(Hearing held December 15, 2004)

**OPINION OF THE BOARD**  
(Effective date of Opinion, February 10, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.326(a)(1)(2)(C). The existing accessory structure (shed/garage) requires a variance of seventeen (17) feet as it is within one (1) foot of the side lot line and the under-construction addition to accessory structure (shed/garage) requires a variance of seventeen (17) feet as it is within one (1) foot of the side lot line. The required setback is eighteen (18) feet.

Kendall and Jennifer Lukas-Jackson, the property owners, appeared at the public hearing.

The subject property is Lot 15, Block 18, Pine Crest Subdivision, located at 6714 Allegheny Avenue, Takoma Park, Maryland, 20912, in the R-60 Zone (Tax Account No. 01071308).

Decision of the Board: Requested variances **denied**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose the addition of the existing 16 x 10.1 foot accessory structure/shed/garage to the dwelling and the construction of a 12 x 30 foot addition to the existing accessory structure/shed/garage.
2. The petitioners testified that their property is a long, narrow lot and that the rear yard has a 14-foot drop in topography. The petitioners testified that the lot slopes gently from front to back and that about three-fourths of the way, the rear yard drops steeply on one-side of the property. The petitioners testified that the topography of their lot is

consistent with other lots on the same side of the street. The petitioners' lot is 6,300 square feet. See, Exhibit No. 14(e) [site plan].

3. The petitioners testified that the existing detached garage/shed will be connected to the house as an addition and that an addition through the construction of a new connecting structure. The petitioners testified that the proposed construction will be a two-story structure and that the first level of the new construction is below grade. The petitioners testified that the addition is being built in the most practical location on the property and that it would provide the easiest access to the dwelling.
4. The petitioners testified that they have a mature oak tree in the rear yard that would be negatively impacted by the re-grading of the land in the area where the tree is located. See, Exhibits Nos. 19(a) and 19(b) [photographs].

### **FINDINGS OF THE BOARD**

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

*(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property that are not shared with adjoining properties on the same side of the street. The Board further finds that the petitioners' lot is consistent in size and shape with the adjoining and neighboring properties. See, Exhibit No. 9 [zoning vicinity map].

The Board notes the petitioners' lot is consistent with minimum lot size for the zone and that neither the siting of a house nor its internal design are circumstances that the Board can take into account in considering an application for the grant of a variance. *Umerley v. People's Counsel*, 108 Md. App. 497, 506 (1996).

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance.

Accordingly, the requested variances of seventeen (17) feet from the required eighteen (18) foot side lot line setback for the construction of an addition of the existing accessory structure/shed/garage and of seventeen (17) feet for the under-construction addition to the accessory structure/shed/garage from the required eighteen (18) foot side lot setback are denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

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Allison Ishihara Fultz  
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 10th day of February, 2005.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

